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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,980	08/26/2003	Karl-Heinz Pitsch	WELLA-204	3076
24972 7590 09/15/2009 FULBRIGHT & JAWORSKI, LLP 666 FIFTH AVE NEW YORK, NY 10103-3198				
EXAMINER DANNEMAN, PAUL				
ART UNIT		PAPER NUMBER		
3627				
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09/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/647,980

Applicant(s)

PITSCH, KARL-HEINZ

Examiner

PAUL DANNEMAN

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-13,15-20,22-27,29-34,36-39,41-46 and 48-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-13,15-20,22-27,29-34,36-39,41-46 and 48-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1 July 2009 has been entered.

Response to Amendment

2. Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46 and 48-51 have been amended.
3. Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46 and 48-51 are pending and have been examined in this office action.
4. The amendment filed 1 July 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: In **Claims 1 and 3-7**, the applicant has introduced the concept of an **"authorized vending device"**; however the Specification only supports an **"authorized user"** of a vending machine.

Applicant is required to cancel the new matter in the reply to this Office Action.

Response to Arguments

5. The objection to the specification under 35 U.S.C. 132(a) because it introduces new matter into the disclosure is respectfully withdrawn as the applicant had amended the claims to remove **"an on demand remote inventory management of said vending device."**
6. The rejection of Claims 1, 8, 12, 19, 27, 34, 37 and 45 under 35 U.S.C. 112, first paragraph is respectfully withdrawn as the applicant has amended the claims.
7. Applicant argues with respect to the rejection of Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46 and 48-51 under 35 U.S.C. § 103(a) **"Bartholomew does not teach or suggest managing**

inventories of a plurality of vending machines remotely from a central computer and in face, does nothing itself to actually manage the restocking of any depleted fluids. Even col. 11, lines 20-43, cited by the Examiner, shows that the apparatus must either 'notify the operator' or 'notify a remote subscriber' of a reduction in product. The claimed invention, on the other hand, removes the need for any operator or remote subscriber involvement, by remotely managing inventories of a plurality of vending machines that might be in a number of disparate locations from the central location." Respectfully the Examiner must disagree. In the Office Action the Examiner cited Column 6, lines 44-67 and Column 7, lines 1-2 of Bartholomew which clearly discloses a database for real-time analysis which allows retailers and manufacturers to make decisions concerning the quantities of inventory of a color or effect to stock or manufacture to reduce the likelihood of excess inventory. Bartholomew in at least Column 6, lines 26-36 further discloses that a skilled artist should be acquainted with various existing techniques for retail networking architecture and operation and incorporates by reference Hartman et al., "one click" shopping in US Pat. No. 54,960,411 which in Fig.2, Column 5, lines 56-67 and Col 6, lines 1-20 discloses an inventory database. Therefore, the claims are properly rejected and remain rejected.

8. Applicant further argues *"Moreover, the claimed invention solves a problem that was simply not at issue in any of the cited references, namely how to remotely manage the product inventory of a plurality of vending devices in many locations over a communications network and schedule delivery only to those vending devices having low inventories."* Respectfully, the Examiner disagrees for the reasons stated above. Also, Bartholomew in at least Column 6, lines 23-36 clearly states the offering of business to business accommodation, so that packagers, retailers, wholesales or other intermediate vendors can custom order individual or lots of products for delivery to a desired location. Therefore, the claims are properly rejected and remain rejected.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. **Claims 1 and 3-7** are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. **"Authorized vending device"** is critical or essential to the practice of the invention, is included in the claim(s), but is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The disclosure only has support for an **"authorized operator."**

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. **Claims 1 and 3-7** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 3-7 recite **"an authorized vending device"** which is not supported by the disclosure.

Claim Rejections - 35 USC § 103

13. **Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46 and 48-51** rejected under 35 U.S.C. 103(a) as being unpatentable over Klein et al., US 5,163,010 hereinafter known as Klein and further in view of Ushikubo, US 4,767,917 and further in view of Bartholomew et al., US 7,099,740 B2 hereinafter known as Bartholomew and further in view of Hartman et al. (hereinafter known as Hartman), US 5,960,411 Incorporated by Reference in Bartholomew.

Claims 1 and 27:

With regard to the limitations:

- ***Sales to authorized personnel,***

Klein does not specifically disclose restricting sales to authorized personnel per se, however in at least Column 6, lines 9-14 discloses the customer criteria are first characterized by the beauty parlor operator. Klein in at least Column 6, lines 39-46 further discloses a beauty parlor operator obtaining a much finer description of a client's hair at any one given time to provide more reproducible results from one permanent wave treatment to the next and still further discloses, in at least Column 9, lines 53-56 the stylist applying one of the dispensed products on the client's hair. Ushikubo, in at least Column 2, lines 45-63 discloses a vending machine wherein a sale is effected only when an authorized user using a registered card which has been or is validated. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to modify Klein with the security features of Ushikubo to insure that only properly authorized personnel dispense hair chemicals for use on a client's hair.

- ***Plurality of vending devices connected to a central computer to remotely maintain inventory data, handle transactions and scheduling deliveries to the plurality of vending devices.***

Klein does not disclose inventory data per se, however Klein in at least Column 9, lines 62-67 and Column 10, lines 1-36 discloses the computer dispensing by weight the required formulation and still further in at least Column 11, lines 37-51 making a determination that a specified amount of product remains in inventory permitting a certain number of perms to be formulated and asking whether the tanks of solution should be refilled (Fig.6a), hence it would be obvious that the computer keeps a running total of each product dispensed.

Ushikubo does not specifically disclose communicating the inventory data. However, Ushikubo in at least Column 5, lines 28-32 discloses maintaining a list of goods which have been sold within the automatic vending machine.

Bartholomew in at least Column 2, lines 19-31 discloses a system for the packaging and mixing of a custom cosmetic. Bartholomew in at least Column 6, lines 44-67 and Column 7, lines 1-2 discloses compiling the data collected through the web site or elsewhere into a database and

using the data concerning the quantities of inventory of a color to affect the stock or manufacture of the product(s). Bartholomew in at least Column 6, lines 6-23 and lines 28-36 discloses Internet related transactions using credit cards and other payment methods. Bartholomew in at least Column 6, lines 23-36 clearly states the offering of business to business accommodation, so that packagers, retailers, wholesales or other intermediate vendors can custom order individual or lots of products for delivery to a desired location.

Bartholomew in at least Column 6, lines 44-67 and Column 7, lines 1-2 clearly discloses a database for real-time analysis which allows retailers and manufacturers to make decisions concerning the quantities of inventory of a color or effect to stock or manufacture to reduce the likelihood of excess inventory. Bartholomew in at least Column 6, lines 26-36 further discloses that a skilled artist should be acquainted with various existing techniques for retail networking architecture and operation and incorporates by reference Hartman et al., "one click" shopping in US Pat. No. 54,960,411 which in Fig.2, Column 5, lines 56-67 and Col 6, lines 1-20 discloses an inventory database. Bartholomew in at least Column 11, lines 20-43 further discloses that inventory levels are recalculated whenever a new reservoir is added. Bartholomew further discloses that in one embodiment the computer that recalculates the inventory can also notify a remote subscriber of the reduction in inventory, obviating the need for the on-site operator to monitor inventory amounts. Therefore the combination of Klein, Ushikubo and Bartholomew discloses a cosmetic vending system which monitors and reports its inventory status to a remote subscriber/user. Therefore, it would be obvious, at the time of invention, to one of ordinary skill to modify the Klein/Ushikubo inventory methods with Bartholomew method for using a network connected to a vending system to collect and transmit inventory data and transaction information with the motivation of insuring that the remote vending system is always properly stocked.

- ***Using a vending machine identifier.***

Klein does not disclose a vending machine identifier.

Ushikubo does not specifically disclose a vending machine identifier per se, however in at least Column 5, lines 22-51 discloses that when the registered card is used and validated at the

vending machine, goods are conveyed and a list of the goods which have been vended is printed and a copy along with the card identifying information is also stored and updated in the automatic vending machine every time the registered card is used for billing a consumer at a later date. Bartholomew in at least Column 6, lines 23-36 clearly states the offering of business to business accommodation, so that packagers, retailers, wholesales or other intermediate vendors can custom order individual or lots of products for delivery to a desired location.

Claims 4-7, 10-11, 15-16, 18, 22-23, 25-26, 30-33, 36-37, 41, and 48-51:

With regard to the limitations:

- ***Sales to authorized personnel,***
- ***Processing a payment,***
- ***Printing a receipt'***
- ***Verifying said payment information is sufficient to cover the cost of one or more hair care or cosmetic products selected by said operator;***

Klein does not disclose processing a payment or printing a receipt, per se. However, Klein in at least Column 2, lines 5-8 discloses a point-of-sale and in at least Fig.1 and Column 2, lines 52-67 discloses a device representing a point-of-sale with an input means for formulating and dispensing a cosmetic formulation as requested. Klein in at least Fig.6e and Column 12, lines 26-34 discloses an automatic printout of a client code number at the point-of-sale.

Ushikubo in at least Column 1, lines 9-16 discloses the use of cash (coins or bills) as commonly being used to induce a sale in automatic vending machines. Ushikubo in at least Column 2, lines 17-28 further discloses a payment on credit method which uses an on-line authorization terminal to ensure that the check cards are valid. Ushikubo in at least Column 5, lines 22-51 discloses the conveyance of goods, the payment for those goods and the printing of a list of the goods that were sold. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to modify Klein with the payment features of Ushikubo to insure that goods are properly paid for, the sale is properly recorded and a receipt is supplied.

Claims 3, 13, 17, 20, 24, 29, 39, 42-44, and 46:

With regard to the limitations:

- ***Mixing formulations per input criteria (shade, hair condition, etc.),***
- ***Dispensing formulations.***

Klein in at least Fig.6f, Column 12, lines 65-67 and Column 13, lines 1-2 discloses the display of the device indicating that a formulation is being dispensed and mixed and an indication when the dispensing and mixing is completed. Klein in at least Fig.7, Column 13, lines 40-42 discloses an optional sound circuit which may be utilized during the dispensing cycle and in lines 49-55 dispensing a specific weight of the solutions into a receptacle. Klein in at least Column 14, lines 32-39 still further discloses that the device has a dispensing means for automatically dispensing said plurality of cosmetically functional mixtures sequentially from their respective container in a formulation receptacle at the point-of-sale.

Claims 8, 12, 19, 34, 38 and 45:

With regard to the limitations:

- ***Sales to authorized personnel,***

Klein does not specifically disclose restricting sales to authorized personnel per se, however in at least Column 6, lines 9-14 discloses the customer criteria are first characterized by the beauty parlor operator. Klein in at least Column 6, lines 39-46 further discloses a beauty parlor operator obtaining a much finer description of a client's hair at any one given time to provide more reproducible results from one permanent wave treatment to the next and still further discloses, in at least Column 9, lines 53-56 the stylist applying one of the dispensed products on the client's hair. Ushikubo, in at least Column 2, lines 45-63 discloses a vending machine wherein a sale is effected only when an authorized user using a registered which is validated. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to modify Klein with the security

features of Ushikubo to insure that only properly authorized personnel dispense hair chemicals for use on a client's hair.

- ***Verifying said payment information is sufficient to cover the cost of one or more hair care or cosmetic products selected by said operator;***

Klein does not disclose a payment method.

However, Ushikubo in at least Column 1, lines 9-16 discloses the use of cash (coins or bills) as commonly being used to induce a sale in automatic vending machines. Ushikubo in at least Column 2, lines 17-28 further discloses a payment on credit method which uses an on-line authorization terminal to ensure that the check cards are valid.

- ***Plurality of vending devices connected to a central computer to remotely maintain inventory data, handle transactions and scheduling deliveries to the plurality of vending devices.***

Klein does not disclose inventory data per se, however Klein in at least Column 9, lines 62-67 and Column 10, lines 1-36 discloses the computer dispensing by weight the required formulation and still further in at least Column 11, lines 37-51 making a determination that a specified amount of product remains in inventory permitting a certain number of perms to be formulated and asking whether the tanks of solution should be refilled (Fig.6a), hence it would be obvious that the computer keeps a running total of each product dispensed.

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Column 6, lines 23-36 clearly states the offering of business to business accommodation, so that packagers, retailers, wholesales or other intermediate vendors can custom order individual or lots of products for delivery to a desired location.

Bartholomew in at least Column 6, lines 44-67 and Column 7, lines 1-2 clearly discloses a database for real-time analysis which allows retailers and manufacturers to make decisions concerning the quantities of inventory of a color or effect to stock or manufacture to reduce the likelihood of excess inventory. Bartholomew in at least Column 6, lines 26-36 further discloses that a skilled artist should be acquainted with various existing techniques for retail networking architecture and operation and incorporates by reference Hartman et al., "one click" shopping in US Pat. No. 54,960,411 which in Fig.2, Column 5, lines 56-67 and Col 6, lines 1-20 discloses an inventory database. Bartholomew in at least Column 11, lines 20-43 further discloses that inventory levels are recalculated whenever a new reservoir is added. Bartholomew further discloses that in one embodiment the computer that recalculates the inventory can also notify a remote subscriber of the reduction in inventory, obviating the need for the on-site operator to monitor inventory amounts. Therefore the combination of Klein, Ushikubo and Bartholomew discloses a cosmetic vending system which monitors and reports its inventory status to a remote subscriber/user. Therefore, it would be obvious, at the time of invention, to one of ordinary skill to modify the Klein/Ushikubo inventory methods with Bartholomew method for using a network connected to a vending system to collect and transmit inventory data and transaction information with the motivation of insuring that the remote vending system is always properly stocked.

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Ushikubo does not specifically disclose a vending machine identifier per se, however in at least Column 5, lines 22-51 discloses that when the registered card is used and validated at the vending machine, goods are conveyed and a list of the goods which have been vended is printed and a copy along with the card identifying information is also stored and updated in the automatic vending machine every time the registered card is used for billing a consumer at a later date.

Bartholomew in at least Column 6, lines 23-36 clearly states the offering of business to business accommodation, so that packagers, retailers, wholesales or other intermediate vendors can custom order individual or lots of products for delivery to a desired location.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL DANNEMAN whose telephone number is (571)270-1863. The examiner can normally be reached on Mon.-Thurs. 6AM-5PM Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul Danneman/

Examiner, Art Unit 3627

12 September 2009

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627